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IN THE

SUPREME COURT OF THE UNITED STATES

No. 432

LEANDRO GOIRICELAYA UGALDE,
Petitioner,

vs.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
LA CONFEDERACION DEL CANADA,

MIGUEL MORALES CALVO and MARIA OFELIA ABREU DE MORALES, his wife,
Petitioners

vs.

THE CROWN LIFE INSURANCE COMPANY,
a Canadian corporation

REPLY BRIEF OF PETITIONERS

WESLEY G. CAREY
JOHN ROBERT TERRY
JOSEPH A. McGOWAN
630 Seybold Building
Miami, Florida 33132
and
SAMUEL SHERADSKY
M-112 Biscayne Bldg.
Miami, Florida 33132

IN THE

SUPREME COURT OF THE UNITED STATES

No. 452

LEANDRO GOIRICELAYA UGALDE,

Petitioner,

vs.

CONFEDERATION LIFE ASSOCIATION,
a Canadian corporation, also known as
LA CONFEDERACION DEL CANADA,

MIGUEL MORALES CALVO and MARIA OFELIA
ABREU DE MORALES, his wife,

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REPLY BRIEF OF PETITIONERS

INTRODUCTION

In this Reply Brief, the following symbols will be used for the purposes of clarity:

"P" will refer to the Petition.
"R" will refer to the Respondents' Brief.
"App." will refer to the Appendix attached to the Petition.

REPLY BRIEF OF PETITIONERS

Respondents contend that the judgment of the Florida Supreme Court was predicated upon:

> "an adequate and independent state ground." (R-1)

This contention is without merit. The Petitioners will demonstrate and the record shows that the decision of the Florida Supreme Court was, and could only have been, predicated upon grounds which raise Federal questions.

Respondents concede that in their appeal from the Trial Court to the Intermediate Court, the District Court of Appeal, Third District, they argued:

(1) "That under Florida conflicts of laws rules the contracts were governed by the laws of Cuba;" and

(2) "That to ignore Respondents' defenses under Cuban law would violate the **Fourteenth Amendment;**"

(3) **"To require payment here would also constitute a violation of International law including the obligations of the United States under the Articles of Agreement of the International Monetary Fund."** (R-4) (Emphasis supplied)

Both the District Court of Appeal and the Florida Supreme Court agreed that the contracts were governed by the laws of Cuba, the District Court of Appeal stating:

> "The policy did not specify the law of any particular jurisdiction to govern it. The contract was made in Cuba[3] and by its terms was to be performed there.[4] Neither Florida nor any jurisdiction other than Cuba had any significant contracts with regards to the obligation of the insurance policy so as to justify or require the contract to be governed by the law of Florida or such other jurisdiction.[5] Under the above conditions it is held uniformally, and in Florida, that when the place of the making and the place of the performance are the same, the law of that jurisdiction determines and controls the

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[3]The policy provided that it became effective upon delivery and payment of the first premium. The first premium was paid in Cuba. That fixed Cuba as the place of the making of the contract. See Equitable Life Assur. Soc. of the United States of America v. McRee, 75 Fla. 257, 78 So. 22; Columbian National Life Insurance Co. v. Lanigan, 154 Fla. 760, 19 So.2d 67.

[4]The policy expressly provided payments thereunder were to be made in Havana, Cuba.

[5]There is authority that does not regard as conclusive the place of making or performance but rather lays emphasis upon the law of the place that has the most significant contacts with the matter in dispute. See Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954). (App.-12)

validity, interpretation, and the rights and obligations under such a contract."

It must be emphasized that the Ugalde Contract with Confederation does indeed expressly provide for payments to be made in Havana, whereas the Calvo contract with Crown Life Insurance Company contract is **silent** as to the place of performance.

The District Court agreed with the insurance companies that the contract in Ugalde was controlled by the law of Cuba, **but went on to hold:**

> "It does not follow, however, that the Trial Court erred as Appellant contends by refusing to dismiss the action. **The courts of Florida were open to the Cuban citizen, while here, to seek redress for a wrong remediable in law, under Section 4 of the Declaration of Rights of Florida.** The error was not in entertaining suit and granting the Summary Judgment for Plaintiff, but in the amount of the judgment." (App.-24) (Emphasis supplied)

The Supreme Court of Florida also agreed that the law of Cuba governed these contracts, stating:

> "The District Court of Appeal opinion, supra, includes an adequate statement of facts and a scholarly and extended treatment of the applicable law. **We disagree with the judgment of the District Court but, to obviate burdenson repetition, we refer to the authority cited in and the rationale of that opinion with approval."** (App.-3) (Emphasis supplied)

So saying the Florida Supreme Court nevertheless reversed the District Court of Appeal and held:

> **"The Florida courts are obligated by the International Monetary Fund Agreement to apply the cited Cuban laws to the contract here involved."**

> "The Petitioner [insurance company] having, upon demand, offered to make payment of the cash surrender of the policy in accordance with the terms of the contract and the law of Cuba, which governs it, in Cuban pesos in Havana, there was no breach of contract and no cause of action against the Petitioner." (Emphasis supplied)

The International Monetary Fund Agreement provides that:

> "exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member." Articles of Agreement of the International Monetary Fund, Art. VIII, Sec. 2 (b), 60 Stat. 1401, 1411 (1945).

Thus the Supreme Court of Florida squarely held that because of the International Monetary Fund Agreement Florida courts were obligated to apply Cuban law and also impliedly found and determined that to order payment in this country was contrary to the Fourteenth Amendment to the Constitution of the United States.

It must be borne in mind that both the Confederation Life policy and the Crown Life policy contain the explicit condition that the policy is issued **without** restriction as to "residence, occupation or travels of the insured."

Florida law specifically allows the institution of an action by resident aliens against insurors in the courts of Florida to recover on policies such as the one involved here. See Confederation of Canada Life Insurance Company v. Vega y Arminian, Fla. App. 1961, 135 So.2d 867, cert.den. with opinion, 144 So.2d 805. Having been authorized to do business in Florida, the appellants were required, and it can be assumed that they do, maintain trust deposits with public officials, or trust institutions approved by the insurance commissioner of Florida, of a minimum of $300,000 or its equivalent in assets in compliance with the terms of 624.0211, Fla.Stat., F.S.A., which provides:

> "Any such deposit made in this state shall be held for the protection of the insurer's policyholders or policyholders and creditors in the United States . . . "

Thus, logic dictates that the only predicate for the Florida Supreme Court's decision after having concurred with the rationale of the District Court's opinion that the contracts were controlled by Cuban law, was that it was its understanding that payment in the United States would violate either the International Monetary Fund Agreement, to which the United States and Cuba were both parties at the time, or alternatively, would violate

the Fourteenth Amendment to the Constitution, both of which contentions were argued by the Respondents.

In the light of the foregoing, it is respectfully submitted that the Writ of Certiorari should issue and the matter disposed of on the merits.

Respectfully submitted,

WESLEY G. CAREY
JOHN ROBERT TERRY
JOSEPH A. McGOWAN
650 Seybold Building
Miami, Florida 33132
and
SAMUEL SHERADSKY
M-112 Biscayne Bldg.
Miami, Florida 33132